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June 14, 2021

Mr. Stephen Parker  
Acting City Manager  
City of Upland  
460 N Euclid Avenue  
Upland, CA 91786

Re: Conflict Waiver - Representation of Western Alliance Bank

Dear Mr. Parker:

Best Best & Krieger LLP ("BBK") represents the City of Upland (the "City") on a variety of matters as its City Attorney. One of the matters BBK is handling for the City involves Western Alliance Bank ("WAB") as a proposed purchaser of the refinancing of the City's multi-family housing notes (collectively, the "Upland Matters"). As you may know, WAB has asked BBK to provide services as WAB's bank counsel related to property assessed clean energy financings (the "PACE Matters"). The City is not involved in the PACE Matters.

The Pace Matters and Upland Matters are completely unrelated. Nonetheless, if BBK represents the City on the Upland Matters while BBK represents WAB on the Pace Matters, this creates a potential conflict of interest for BBK. Therefore, we write to advise the City of the potential conflict of interest, the impact of our representation, and to obtain the City's informed written consent to our representation of WAB on the Pace Matters under these circumstances. For your information, we are requesting the same of WAB.

**RULES OF PROFESSIONAL CONDUCT**

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's

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responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

- ...
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), ... and:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law; and
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

#### **SCOPE OF REPRESENTATION & DISCLOSURES**

As part of this consent, the City agrees that we may represent WAB on the Pace Matters and other matters as needed so long as those other matters are not related to the City while we concurrently represent the City on the Upland Matters. Our representation of the City and WAB as described in this letter is not prohibited, but requires the City's consent. We do not believe our representation of WAB will impair our competency, diligence or loyalty to the City nor will it otherwise materially limit our representation of the City or impair our independent professional judgment in any way. For example, we do not believe we will be tempted to favor the interests of one client over the other, nor do we think the relationship will create any appearance of impropriety. However, these are all things the City should consider before signing this waiver.

In the event that circumstances change or we become aware of new information that requires client consent or new notice, each client will be notified of that fact immediately, and continued representation will be subject to that notice and the informed written consent of each client will be obtained as necessary. Should an actual conflict of interest develop in the future or if the relationship should materially limit our representation of either client, we may be required to terminate our representation, which could impact attorney's fees and costs should the City need to hire new counsel at that time.

#### **THE CITY'S CONSENT**

If the City agrees to the above, we need an authorized representative of the City to sign this consent letter. This consent will not waive any protection that the City may have with regard to attorney-client communications with us in the Upland Matters in which BBK represents the City.

**BBK**  
**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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Those communications will remain confidential and will not be disclosed to any third party without the City's consent.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

The City's execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter, and the City's consent to our representation of WAB on the Pace Matters while we concurrently continue representing the City on the Upland Matters. If you have any questions, please do not hesitate to call.

Sincerely,



Stephen P. Deitsch  
of BEST BEST & KRIEGER LLP

**CONSENT**

By this letter, Best Best & Krieger LLP has explained the existing and/or reasonably foreseeable potential risks and conflict(s) of interest in the above referenced matter, and has informed the City of the possible consequences of this representation and these conflicts. I understand that the City has the right to and has been encouraged to consult with independent counsel before signing this consent, and I acknowledge that the City has been given sufficient time to do so. Notwithstanding the foregoing, the City hereby consents to the above.

By:   
For: City of Upland

Dated: 7/13/21